

## **Section 3: Permitted and Required Uses and Disclosures of Protected Health Information**

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### **Purpose**

To issue instructions to all FSSA/OMPP staff regarding the policy and procedures for permitted uses and disclosures of PHI.

### **Policy**

#### **Use of PHI for Treatment, Payment, and Health Care Operations (TPO)**

The IHCP is allowed to use or disclose PHI, to the extent permitted by the *Privacy Rule*.

The IHCP must document (i.e., account for) all instances in which PHI is released to an external entity for purposes other than treatment, payment, or health care operations, since an IHCP member has the right to request and receive an accounting for such disclosures (please refer to Section 18 of this manual, *Accounting of Disclosures to Member*, for further explanation).

For a complete definition of *treatment, payment, and healthcare operations (TPO)*, refer to the *Glossary* included in this manual.

The majority of PHI received and disclosed by the IHCP is used for treatment, payment, and healthcare operations (TPO), so the disclosure of PHI for other purposes should be minimal.

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#### **Accounting of Disclosures to Members**

The *Accounting of Disclosures to Member* section (Section 18 in this manual) should be referenced to determine which disclosures the IHCP must account for, and what information must be documented and maintained in order to provide an accounting of disclosures to members upon request by a member.

**Permitted  
Uses and  
Disclosures**

The IHCP may use or disclose PHI:

- To the member;
- For treatment, payment, or healthcare operations (TPO);
- As permitted by, and in compliance with, the following situations:
  - Uses and disclosures required by law;
  - For public health activities, if required by law;
  - Health oversight agency;
  - Judicial proceedings;
  - Research (for a related State Plan purpose); and
  - Law enforcement purposes; or
- Pursuant to an authorization or agreement by the member.

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**Required  
Disclosures  
of PHI**

The IHCP is required to disclose protected health information:

- To a member or to a member's personal representative, when requested under, and as required by the *Privacy Rule*, or
- When required by the Secretary of HHS to investigate or determine the IHCP compliance with the *Privacy Rule*.

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**Routine uses  
or disclosures**

A *routine use or disclosure* is one of a series of repetitive uses or disclosures:

- Which are made to the same person or entity, pursuant to a single authorization and
- Which are for the same purpose, pursuant to a single authorization; or
- Which are permitted without authorization under the *Privacy Rule*, for the purposes of treatment, payment, or healthcare operations.

All routine use or disclosure requests that require authorization will be forwarded to the IHCP Privacy Office, who will then complete the request and document the recurring PHI use or disclosure.

The uses and disclosures must be documented according to the *Accounting of Disclosures to Member* Section 18, as appropriate.

**Non-routine  
uses or  
disclosures**

A *non-routine use or disclosure* is a unique, one-time request made by a person or entity for the use or disclosure of PHI pursuant to an authorization, or as permitted without authorization under the *Privacy Rule* (i.e., not for the purpose of treatment, payment, or healthcare operations).

All non-routine use or disclosure requests that require authorization will be forwarded to the IHCP Privacy Office, who will then complete the request and document the PHI use or disclosure.

Some requests might be denied.

If release of the PHI is approved, the Privacy Office will coordinate the requested release with the appropriate EDS Unit, OMPP Unit, or HCE Unit.

The uses and disclosures will be documented as found in the *Accounting of Disclosures to Member* Section 18, as appropriate.

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**Minimum  
Necessary  
Requirement**

When using or disclosing PHI, the IHCP must:

- Provide only the minimum necessary PHI to accomplish the intended purpose of the use, disclosure, or request (for additional information, see Section 4, Minimum Necessary Requirements, of this manual); and
- Have appropriate administrative, technical, and physical safeguards in place to protect the member's PHI (for additional information, see Section 20, Protected Health Information Safeguards, of this manual).

## Procedure

### Disclosure of PHI for TPO

OMPP staff members will continue to use and disclose PHI within the authorized, routine duties of their assigned positions. For example, if an individual calls a staff member with a simple request, but one which would require the staff member to release PHI to that individual, the staff member may still directly respond to this individual after following the proper protocols to verify the identity and authority of the requesting individual.

Specific disclosure requirements and protocols are provided Appendix G of this manual.

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### Disclosure of PHI for purposes other than for TPO

PHI will **not be used or disclosed for any purposes** other than treatment, payment, and healthcare operations (TPO), without the express approval of the OMPP Privacy Coordinator.

PHI disclosure requests which are outside the authority of OMPP staff members, should be forwarded to the IHCP Privacy Office:

IHCP Privacy Office  
P.O. Box 7260  
Indianapolis, Indiana 46207-7260

The phone number is: (317) 713-9627 or 1-800-457-4584

Deleted: 488-5018

### Definition of TPO

See the Glossary included in this manual for a detailed definition of TPO.

## Regulatory Requirements and Authority: 45 CFR 164.502

## Section 4: Minimum Necessary Requirements

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### Purpose

To issue instructions to all FSSA/OMPP staff regarding the policy and procedures relating to the minimum necessary requirements for the use and disclosure of PHI.

**This section pertains specifically to the use and disclosure of PHI information outside of the IHCP.**

Refer to the Protected Health Information Access for Staff Use, Section 19 of this manual, for further detail regarding the minimum necessary requirements for FSSA/OMPP staff.

### Policy

#### Minimum Necessary Requirement

For most PHI uses and disclosures, the IHCP must apply the minimum necessary requirements. The IHCP shall limit access and use of PHI by its staff and contractors to the minimum necessary to accomplish the defined work functions. The requirements also apply to PHI requests made by, or on behalf of, the IHCP to another covered entity.

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#### Types of information for which access limitations apply

The access limitations apply to electronic, paper, and oral communication of PHI. This is inclusive of IndianaAIM, OnDemand, and Business Objects access, along with any other database or repository of information containing PHI.

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#### Exclusions to the Minimum Necessary Requirement

There are instances in which the minimum necessary limitation is **not required**, including:

- Disclosures made to a member's health care provider for the purpose of providing treatment;
  - Disclosures made to the member or through the member's written authorization in regard to their own PHI; or
  - Uses or disclosures required by law, and when required by the Secretary of HHS to investigate or determine IHCP compliance with the *Privacy Rule*.
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## Procedure

**Limited  
access by  
FSSA/OMPP  
staff**

FSSA/OMPP staff will have access to the minimal amount of member PHI that is necessary to perform required work functions.

The appropriate unit supervisor will be responsible for determining access needed for assigned staff members, and for granting the appropriate access to assigned staff members.

Documentation regarding such access will be maintained by the OMPP Privacy Coordinator.

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**Disclosure of  
PHI for TPO**

OMPP staff members will continue to use and disclose PHI within the authorized, routine duties of their assigned positions. PHI used for such authorized purposes will be limited to the minimum necessary to accomplish the defined work functions. Refer to Table 4.1 on the following page for a summary of specific disclosures (including disclosure of TPO) that must be limited to the minimum necessary.

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**Disclosure of  
PHI for  
purposes  
other than  
for TPO**

PHI will **not be used or disclosed for any purposes** other than treatment, payment, and healthcare operations (TPO), without the express approval of the OMPP Privacy Coordinator. Use or disclosure of PHI will then be limited to the minimum necessary to accomplish the defined work functions.

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**Definition of  
TPO**

See the *Glossary* included in this manual for a detailed definition of TPO.

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**Regulatory Requirements and Authority:**

**45 CFR 164.502(b) and 164.514(d)**

**Table 4.1: Protected Health Information –  
Summary of Minimum Necessary Requirements**

PHI release requested to/for:	Minimum Necessary Standard Applies
To a member	No- after verification of identity
To a member's personal representative/legal guardian	No- after verification of identity
To a member's health care provider*	No- after verification of identity
To a member's attorney	No- after authorization
To a member's legislative representative	No- after authorization
To a deceased member's personal representative	No- after verification of identity/authorization
For payment purposes*	Yes
For health care operation purposes*	Yes
Required by law	PHI release must be limited to the relevant requirements of the specific law.
For public health activities	PHI release must be limited to the relevant requirements of the specific law.
For law enforcement purposes	Yes
For health oversight activities	Yes
For worker's compensation activities	Yes
To the Secretary of HHS	No
De-identified information	Individually identifiable information is removed before disclosure.
Limited data set	May only be used for research, public health, or health care operation purposes, select direct identifiers are removed from information before disclosure.
By a whistleblower	Yes
By a workforce crime victim	Limited to the requirements in 45 CFR 164.502(j)
Prior to April 14, 2003	No

Deleted: No

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Deleted: No

\* Psychotherapy notes can be disclosed without member authorization ONLY for the following specific treatment, payment, and health care operations:

- Use by the originator of the psychotherapy notes for treatment
- Use or disclosure by the IHCP to defend itself in a legal action or proceeding brought by the member
- A use or disclosure permitted with respect to the oversight of the health care provider originating the psychotherapy notes.
- For any other use, coordinate with the OMPP Privacy Coordinator.

## Section 5: De-identified Protected Health Information

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### Purpose

To issue instructions to all FSSA/OMPP staff regarding the policy and procedures relating to the de-identification of PHI and the use of de-identified PHI.

### Policy

#### De-identified information and PHI requirements

Health information that meets the standards for de-identified PHI is not considered to be individually identifiable information. The requirements for PHI use and disclosure do not apply to de-identified PHI if the requirements for de-identifying the information have been met and the disclosure of a code or other means of re-identification have not been disclosed to the de-identified information requester.

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#### Definition of de-identified information

The IHCP is permitted to use PHI to create information that does not individually identify members. De-identified PHI is information where the removal of data elements has made the identification of a member impossible from the data contained on a released document, released dataset, or disclosed orally.

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#### Limited Data Set

PHI that excludes specific direct identifiers of the individual or of relatives, employers, or household members of the individual constitutes a limited data set. A limited data set is considered de-identified PHI and therefore not considered to be individually identifiable information. See *IHCP Limited Data Set*, in the Glossary Section of this manual, for a complete description of a limited data set, as applicable to the IHCP.

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**Requirements  
of de-identified  
PHI**

The IHCP may determine that health information is de-identified PHI only if:

- A person with appropriate knowledge of and experience with generally accepted statistical and scientific principals and methods renders the information individually de-identified; **AND**
- The following identifiers of the member or of relatives, employers or household members of the individual are removed (limited data set):
  - Names;
  - All geographic subdivisions smaller than a State, including street address, city, county (except as noted below\*), precinct, zip code, and their equivalent geocodes, except for the initial three digits of a zip code if the geographical unit formed by the zip code contains more than 20,000 people;
  - All elements of dates (except year) for dates directly related to member, including birth date, admission date, discharge date, date of death; and all ages over 89 and all elements of dates (including year) indicative of such age, except that such ages and elements may be aggregated into a single category of age 90 or older;
  - Telephone numbers;
  - Fax numbers;
  - Electronic mail addresses;
  - Social security numbers;
  - Medical record numbers;
  - Health plan beneficiary numbers;
  - Account numbers;
  - Certificate/license numbers;
  - Vehicle identifiers and serial numbers, including license plate numbers;
  - Device identifiers and serial numbers;
  - Web Universal Resource Locators (URLs);
  - Internet Protocol (IP) address numbers;
  - Biometric identifiers, including finger and voice prints;
  - Full face photographic images and any comparable images; and
  - Any other unique identifying number, characteristic, or code; and the covered entity does not have actual knowledge that the information could be used alone or in combination with other information to identify an individual who is subject of the information.

**Requirements  
of de-identified  
PHI (continued)**

**\* NOTE**

In counties or any other geographic subdivisions with populations less than 20,000 (this could be a city, zip code, precinct, etc.), the geographic identifier must be removed. If County X and County Y each have populations of less than 20,000, then these county codes must be removed, in addition to other identifying information as detailed above, in order for the data set to be considered limited. However, if County Z has a population of 50,000, then the county identifier may be provided and the data set would still be considered a limited data set.

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**Permitted use  
and disclosure  
of de-identified  
PHI**

The IHCP is permitted to use de-identified PHI and can release de-identified information without the member's consent.

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**Accounting of  
disclosures**

The IHCP is not required to account (i.e., document) for the disclosure of de-identified PHI to the member.

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**Re-identification  
of otherwise  
de-identified  
PHI**

Disclosure of a code or other means of record identification designed to enable coded or otherwise de-identified information to be re-identified constitutes disclosure of PHI.

If de-identified information is re-identified, the IHCP may use or disclose such re-identified information only as permitted or required by the *Privacy Rule*.

## Procedure

**Who will de-identify PHI**

Only FSSA/OMPP staff designated by the OMPP Privacy Coordinator will perform the de-identification process for PHI.

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**De-identification for routine releases**

Key staff, designated by the OMPP Privacy Coordinator, will be responsible for verifying that PHI has been properly de-identified. This needs to be done only the initial time for routine reports or releases (for example, a report produced each quarter for entity X, would only need to be verified one time, prior to the initial release, and does not need to be verified prior to each quarterly release UNLESS changes are made to the report content).

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**De-identification for non-routine releases**

For non-routine reports or releases, the key staff member(s) identified by the OMPP Privacy Coordinator will verify each time that the PHI had been properly de-identified prior to release of information to any person or entity (for example, a single report requested by entity X, that is not a standard report produced for release, would be classified as a non-routine report and would therefore require verification prior to release)

**Regulatory Requirements and Authority:**

**45 CFR 164.502(d) and 164.514(a)-(c)**

## **Section 6: Disclosures to Business Associates**

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### **Purpose**

To issue instructions to all FSSA/OMPP staff regarding the policy and procedures for permitted uses and disclosures of PHI to their business associates.

### **Policy**

#### **Business Associates (defined)**

A person or organization that performs a function or activity on behalf of the IHCP, but is not part of the FSSA/OMPP staff, such as EDS, Health Care Excel (HCE), or Myers and Stauffer.

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#### **Use of a business associate**

The IHCP contracts with numerous business associates to carry out functions on behalf of the IHCP. The IHCP uses business associates to arrange, perform, or assist in the performance of a function or activity involving the use or disclosure of PHI, including claims processing, and health care operations, on the behalf of the IHCP.

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#### **Disclosures to Business Associates**

Before the IHCP may disclose PHI to a business associate or allow a business associate to create or receive PHI on behalf of the IHCP, the IHCP must obtain satisfactory assurance in the form of a written business associate agreement, or contract amendment containing terms of a business associate agreement. The terms of the business associate contract or amendment must specify that the business associate will appropriately safeguard and limit the use and disclosure of PHI to the minimum necessary to fulfill their contractual requirements.

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#### **Business Associate Agreement**

The language in the business associate agreement requires the business associate to adhere to all federal and state laws and statutes for the privacy of PHI.

**Breach or Violation by a business associate**

If the IHCP learns that a business associate has materially breached or violated the satisfactory assurance of its business associate contract, the IHCP must take prompt, reasonable steps to see that the breach or violation is cured. If the business associate does not promptly and effectively cure the breach or violation, the IHCP must terminate the contract with the business associate, or if contract termination is not feasible, report the business associate's breach or violation to Health and Human Services.

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**Exclusions**

This standard does not apply:

- With respect to disclosures by the IHCP to a health care provider concerning the treatment of a member; or
- With respect to uses or disclosures by the IHCP, county caseworkers, and staff who maintain the Indiana Client Eligibility System (ICES) as they relate to the determination of member eligibility and enrollment in the IHCP.
- Neither providers nor the local office of Family and Children are considered "business associates" under HIPAA.

## **Procedure**

**Releasing PHI to business associates**

Business associates may require PHI to effectively perform contracted functions of the IHCP. PHI may be disclosed to business associates only to perform authorized functions **as specified in the approved business associate agreement.**

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**Questions**

Any questions regarding release of PHI to business associates should be addressed to the OMPP Privacy Coordinator.

**Suspected  
breach or  
violation**

The OMPP Privacy Coordinator should be notified immediately if a business associate is suspected of breaching or violating their business associate agreement.

The OMPP Privacy Coordinator will document and investigate the suspected breach or violation. If a violation or a breach has occurred the business associate will be given an opportunity to cure the breach or violation.

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**Verified  
breach or  
violation**

If the business associate does not promptly and effectively cure the breach or violation, the IHCP will terminate the contract with the business associate.

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**Mitigation**

The IHCP must mitigate, to the extent practicable, any harmful effect that is known to the IHCP of a use or disclosure of protected health information in violation of policies and procedures, or of any requirements contained within the *Privacy Rule*, by a business associate.

**Regulatory Requirements and Authority: 45 CFR 164.502(e)**

## Section 7: Protected Health Information of Deceased Members

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### Purpose

To issue instructions to all FSSA/OMPP staff regarding the policy and procedures for acceptance of, response to, and documentation of requests for PHI of deceased members.

### Policy

#### Rights of personal representative

The IHCP must allow the personal representative of the deceased member the right to inspect or copy the member's PHI contained in the designated record set (for a complete definition of designated record set, refer to the *Glossary* included in this manual). Notice of these rights and the process for the member's personal representative to follow in order to exercise them are provided to each IHCP member in the *Notice of Privacy Practices*.

The IHCP is allowed to use or disclose PHI of a deceased member to a personal representative who is permitted under applicable law to act with respect to the interest of the deceased or on behalf of the deceased's estate or to make decisions regarding the deceased member's PHI. Proof of the representative's identity and authority must be provided prior to the release. See Appendix C for the Verification of Identity and Authority Form.

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#### Requests for access to records by the personal representative

The IHCP will require that the personal representative of the deceased member make the request in writing. All requests for access received by the IHCP Privacy Office will be documented, reviewed, and responded to the requesting personal representative of the deceased member by the IHCP Privacy Office, within the timeframes required by the *Privacy Rule*.

**Requirement to protect PHI of deceased members**

The IHCP must comply with the PHI requirements of the *Privacy Rule* with respect to the PHI of a deceased member. The IHCP is required to protect PHI about deceased members for as long as it maintains the information.

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**When the IHCP is not the originator of the PHI**

In most cases of PHI, the IHCP is not the originator of the information. In cases where IHCP is not the originator, the IHCP will refer the member to the healthcare provider originating the PHI.

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**Accounting of disclosures**

The accounting of disclosures for a deceased member's PHI is treated like that for a living member's PHI, including the exceptions as noted in the *Accounting of Disclosures to Member* Section 18. The decedent's personal representative has the right to request and receive the disclosure accounting. The IHCP Privacy Office will manage all requests for disclosure accountings.

## **Procedure**

**Requests for PHI for deceased member**

The IHCP Privacy Office will manage all requests for copies of PHI from deceased member's authorized personal representatives, with the exception of those requests related to Medicaid estate recovery. This includes requests for copies of PHI that may be maintained by FSSA/OMPP staff.

If a deceased member's representative requests a copy of their PHI, refer them to the IHCP Privacy Office.

IHCP Privacy Office  
P.O. Box 7260  
Indianapolis, Indiana 46207-7260

The phone number is: (317) 713-9627 or 1-800-457-4584

Deleted: 488-5018

The IHCP Privacy Office will be responsible for verification of the individual requesting information on behalf of a deceased member.

**Regulatory Requirements and Authority:**

**45 CFR 164.502(f) and 164.512(g)**

## Section 8: Disclosures to Personal Representatives and Rights of Minors

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### Purpose

To issue instructions to all FSSA/OMPP staff regarding the policy and procedures for disclosures of PHI to a member's personal representative and the rights of a minor.

### Policy

#### Rights of the Personal Representative

A designated personal representative of a member has the right to inspect and obtain a copy of the member's PHI in the IHCP designated record set. The IHCP must treat a personal representative as the member with respect to PHI, except as indicated in the *Privacy Rule* for unemancipated minors (as defined in the *Glossary*), and in situations of abuse, neglect, and endangerment.

See Appendix I to access the *Personal Representative Authorization Form*, which is used to designate a member's personal representative.

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#### Requests for PHI by a Personal Representative

The IHCP will require the personal representative to complete a written request using the *Member Access Request* form (see Appendix B). The personal representative must provide a copy of documentation supporting representation of the member. All written requests for access received by the IHCP Privacy Office will be documented, reviewed, and responded to by the IHCP Privacy Office, within the timeframes required by the *Privacy Rule*.

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#### When the IHCP is not the originator of the PHI

In most cases of PHI, the IHCP is not the originator of the information. In this case, the IHCP will refer the personal representative to the healthcare provider originating the PHI.

**Unemancipated Minors** In the state of Indiana, a parent, guardian, or other court appointed representative is entitled to exercise the member's rights on the member's behalf if the member is an unemancipated minor. The IHCP must treat such individuals as personal representatives of members who are unemancipated minors, with respect to PHI.

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**Parental Rights** A custodial parent and noncustodial parent of a child have equal access to the child's health records unless:

- A court has issued an order that limits the noncustodial parent access to the child's health records; and
- The IHCP has received a copy of the court order; or
- The IHCP has actual knowledge of the final court order.

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**Adults and Emancipated Minors** If under state law a person has authority to act on behalf of a member who is an adult or an emancipated minor in making decisions related to health care, the IHCP must treat such person as a personal representative with respect to PHI.

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**Revocation of rights as a personal representative** The IHCP may decide not to treat a person as the personal representative of a member if the IHCP has a reasonable belief that:

- The member has been or may be subjected to domestic violence, abuse, or neglect by such person; or
- Treating such person as the personal representative could endanger the member; and
- The IHCP, in the exercise of professional judgment, decides that it is not in the best interest of the member to treat the person as the member's personal representative.

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## Procedure

### Requests for PHI from Personal Representatives

The IHCP Privacy Office will manage all requests for copies of PHI from personal representatives of members. This includes requests for copies of PHI that may be maintained by FSSA/OMPP staff.

If a personal representative of a member requests a copy of their PHI refer them to the IHCP Privacy Office.

IHCP Privacy Office  
P.O. Box 7260  
Indianapolis, Indiana 46207-7260

The phone number for the IHCP Privacy Office is: (317) 713-9627 or  
1-800-457-4584

Deleted: 488-5018

The IHCP Privacy Office will be responsible for verification of the individual requesting information on behalf of a member.

### Regulatory Requirements and Authority:

45 CFR 164.502(g) and  
Indiana Code (IC) 16-39-1-3 and IC 16-39-1-1

## Section 9: Disclosures by Whistleblowers

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### Purpose

To issue instructions to all FSSA/OMPP staff regarding the policy and procedures relating to PHI disclosures by whistleblowers and workforce member crime victims.

### Policy

#### Disclosures by Whistleblowers

A workforce member or business associate of the IHCP has the right to disclose PHI if they believe in good faith that the IHCP has engaged in conduct that is unlawful or otherwise violates professional standards, or that the services or conditions provided by the IHCP endangers one or more members, workers, or the public. The IHCP will not be considered to have violated the requirement of the *Privacy Rule* if a member of its workforce or a business associate discloses PHI, provided that the disclosure is made to:

- A health oversight agency or public health authority authorized by law to investigate or otherwise oversee the relevant conduct or conditions of the IHCP or to an appropriate health care accreditation organization for the purpose of reporting the allegation of failure to meet professional standards or misconduct by the IHCP, or
  - An attorney retained by or on behalf of the workforce member or business associate for the purpose of determining the legal options of the workforce member or business associate with regard to the conduct of the IHCP.
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#### Disclosures by Workforce Members

A workforce member who is a victim of a criminal act has the right to disclose PHI information to law enforcement officials. The IHCP, or its business associates, will not be considered to have violated the requirements of the *Privacy Rule* if a member of its workforce who is a victim of a criminal act discloses PHI information to a law enforcement official to be used for purposes to identify and locate a suspected perpetrator, provided that:

- The PHI disclosure is about the suspected perpetrator of the criminal

act; and

**Disclosures by  
Workforce  
Members  
(continued)**

- The PHI disclosed is limited to the information listed below:
  - Name and address;
  - Date and place of birth;
  - Social Security Number;
  - Type of injury;
  - Date and time of treatment; and
  - Date and time of death, if applicable.

## Procedure

**Accounting of  
disclosures**

The IHCP is not required to account for disclosures, to the IHCP member, by whistleblowers and workforce member crime victims. See the *Permitted and Required Uses and Disclosures of Protected Health Information* Section 3 for additional information.

**Regulatory Requirements and Authority:  
45 CFR 164.502(j)**

## **Section 10: Uses and Disclosures of Protected Health Information When Member Authorization is Not Required**

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### **Purpose**

To issue instructions to all FSSA/OMPP staff regarding the policy and procedures relating to uses and disclosures of PHI that does not require a member's authorization.

The *Privacy Rule* allows a covered entity to provide PHI without an individual's authorization for various reasons; however, given the IHCP status as a health plan as opposed to a direct provider of healthcare, the IHCP will have limited circumstances when these requirements are applicable. The full extent of the requirements can be found at 45 CFR 164.512 (a)-(l).

The IHCP scope of activity is documented in the *Policy and Procedure* discussions immediately following.

### **Policy**

#### **Use of a member's PHI**

The IHCP may use or disclose a member's PHI without their written authorization or without providing the member the opportunity to object to the use or disclosure for the purposes of treatment, payment, and health care operations (TPO).

There are some situations in which the IHCP is required to notify the member of the PHI use or disclosure, and some in which the member can agree to the use or disclosure. In these situations, the IHCP may provide notification verbally to the member and then the member can give agreement verbally.

**Permitted  
disclosure of  
PHI without  
written  
authorization**

Although the *Privacy Rule* provides for many instances in which the IHCP can use or disclose PHI without a member's written authorization, there are limited circumstances when this will occur within the IHCP. Common situations within the IHCP that do not require written authorization for disclosure of PHI include:

- Uses and disclosures for the purposes of treatment, payment, or health care operations;
- Uses and disclosures required by law, including:
  - Court orders and court-ordered warrants;
  - Subpoenas or summons issued by a court, grand jury, or inspector general; or
  - A civil or an authorized investigative demand;
- Uses and disclosures for public health activities if required by law;
- Uses and disclosures for health oversight activities, including:
  - Civil, criminal, or administrative investigations;
  - Audits or inspections; or
  - An investigation or activity that comes from or is directly related to the receipt of health care, a claim for public benefits related to health, or qualification for, or receipt of, public benefits or services related to a member's health;
- Disclosures for judicial and administrative proceedings, as described under uses and disclosures required by law;
- Disclosures for law enforcement purposes, as described under uses and disclosures required by law;
- Disclosures for workers' compensation for purposes of TPL or similar programs as established by law;
- Disclosures of PHI to an attorney for the purpose of third party liability (TPL) settlement.

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**Minimum  
Necessary  
Requirement**

With the exception of uses or disclosures that are required by law, the IHCP must make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request for the purposes described above. See Section 4 of this manual, *Minimum Necessary Requirements*, for additional information on this topic.

**Verification  
and  
documentation  
requirements**

*Note:* The IHCP must verify the identity of the person requesting PHI, and whether the person has the authority to access PHI, if the identity or such authority of the person is not known to the IHCP. Also, the IHCP must obtain any documentation, statements, or representations (written or oral) from the person requesting the PHI when the documentation, statement, or representation is required for the PHI disclosure (see Section 12, and Figure 12.1). The IHCP Privacy Office will be responsible for those disclosures requiring verification and documentation.

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**Accounting of  
Disclosures**

Uses and disclosures of PHI will be documented, as required by the *Privacy Rule*, for the purpose of providing an *Accounting of Disclosures* to members. See Section 18 of this manual, *Accounting of Disclosures to Member*, for specific uses and disclosures for which an accounting is required, and for additional information regarding this topic.

IHCP members may request an *Accounting of Disclosures*, except for those cases where the member's rights for such an accounting are suspended. These cases would involve:

- National security and intelligence activities or
- Correctional institutions and other law enforcement custodial situations.

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**Requests for  
PHI use or  
disclosure**

All requests for PHI use or disclosure discussed in this section must be referred to the IHCP Privacy Office, with the exception of requests for PHI disclosures related to workers' compensation or similar programs as established by law, and for disclosures for TPO within the IHCP. Requests for disclosures related to workers' compensation or similar programs are directed to, and will be responded to by, the IHCP Third Party Liability (TPL) Unit. Disclosures of PHI for the purposes of TPO do not require tracking or approval.

## Procedure

PHI will not be used or disclosed for any purposes other than treatment, payment, and healthcare operations (TPO), without the express approval of the OMPP Privacy Coordinator.

See the Glossary included in this manual for a detailed definition of TPO.

**Regulatory Requirements and Authority: 45 CFR 164.512(a)-(1)**

## Section 11: IHCP Member Access to Protected Health Information

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### Purpose

To issue instructions to all FSSA/OMPP staff regarding the policy and procedures relating to members' rights relating to their access to PHI.

### Policy

#### Member Rights

A member, or a designated personal representative of the member, has the right to inspect and obtain a copy of their PHI in the IHCP designated record set. The IHCP must allow the member the right to inspect or copy their PHI, which is contained in the designated record set. Notice of these rights and the process for the member to follow to exercise them are provided to each IHCP member in the *Notice of Privacy Practices*.

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#### Requests for access to PHI

The IHCP requires that the member, or the member's personal representative, make the request in writing. All written requests for access received from a member or the member's personal representative, will be documented, reviewed, and responded to, by the IHCP Privacy Office, within the timeframes required by the *Privacy Rule*.

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#### When the IHCP does not maintain the PHI

For some cases, the IHCP does not maintain the requested PHI (i.e., medical records are originated and maintained by a physician or hospital). In this case, the IHCP will refer the member to the healthcare provider maintaining the PHI.

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#### Accounting of disclosures

A use or disclosure of PHI requested by the member, or the member's personal representative, is not required to be included in the accounting of disclosures of that member's PHI.

## Procedure

### Requests for PHI

In most cases, the IHCP Privacy Office will manage all requests for copies of PHI from members. This includes requests for copies of PHI that may be maintained by FSSA/OMPP staff.

**However, this procedure is not intended to impede usual operational protocols. Authorized staff members may continue to use and disclose PHI within the authorized, routine duties of their assigned positions. Appropriate procedures to follow when carrying out these authorized duties are detailed throughout the appropriate sections of this manual, and in Appendix G.**

If a member requests a copy of their PHI, refer them to the IHCP Privacy Office as appropriate.

IHCP Privacy Office  
P.O. Box 7260  
Indianapolis, Indiana 46207-7260

The phone number is: (317) 713-9627 or 1-800-457-4584

Deleted: 488-5018

**Regulatory Requirements and Authority: 45 CFR 164.524**